

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement for date of service 6-1-01?  
b. The request was received on 5-31-02.

### **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC-60 and Letter Requesting Dispute Resolution
  - b. UB-92
  - c. EOBs
  - d. Medical Records
  - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. TWCC 60 and Response to a Request for Dispute Resolution
  - b. Payment Methodology
  - c. UB-92
  - d. EOBs
  - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 7-1-02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 7-1-02. The response from the insurance carrier was received in the Division on 7-15-02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: per letter dated 6-25-02:  
“(Provider) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services.”
2. Respondent: per letter dated 7-12-02:

“The dispute in this case is in regard to the Requestor’s entitlement to additional reimbursement for facility charges associated with the following treatment performed by (Requestor) on 06-01-01...The requestor has failed to establish that its charges and the reimbursement that it seeks is fair and reasonable and complies with the Texas Worker’s Compensation Act of TWCC Rules.”

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d)(1&2), the only (DOS) eligible for review is 6-1-01.
2. The amount in dispute per the TWCC-60 is \$5,516.25.
3. The amount paid per the EOBs reviewed is \$483.72 leaving a balance of \$3,943.53.
4. The issue is fair and reasonable reimbursement of an ambulatory surgery center’s facility fee.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011(b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304(i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier has submitted its methodology and satisfied the requirements of the referenced Rule.

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier’s methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine, based on the parties’ submission of information, who has provided the more persuasive evidence. The Requestor has not discussed, demonstrated, or justified that the payment being sought is fair and reasonable which is required by Section 413.011 (b) of the

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Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 19<sup>th</sup> day of August 2002

Lesa Lenart, RN  
Medical Dispute Resolution Officer  
Medical Review Division

LL/ll

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.